



M&A Update

Outlook Following the First Quarter of 2026 – Figures and Trends

Speakers



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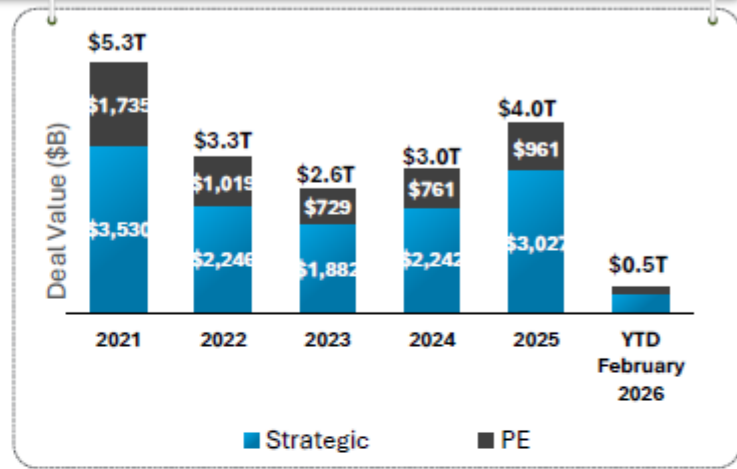
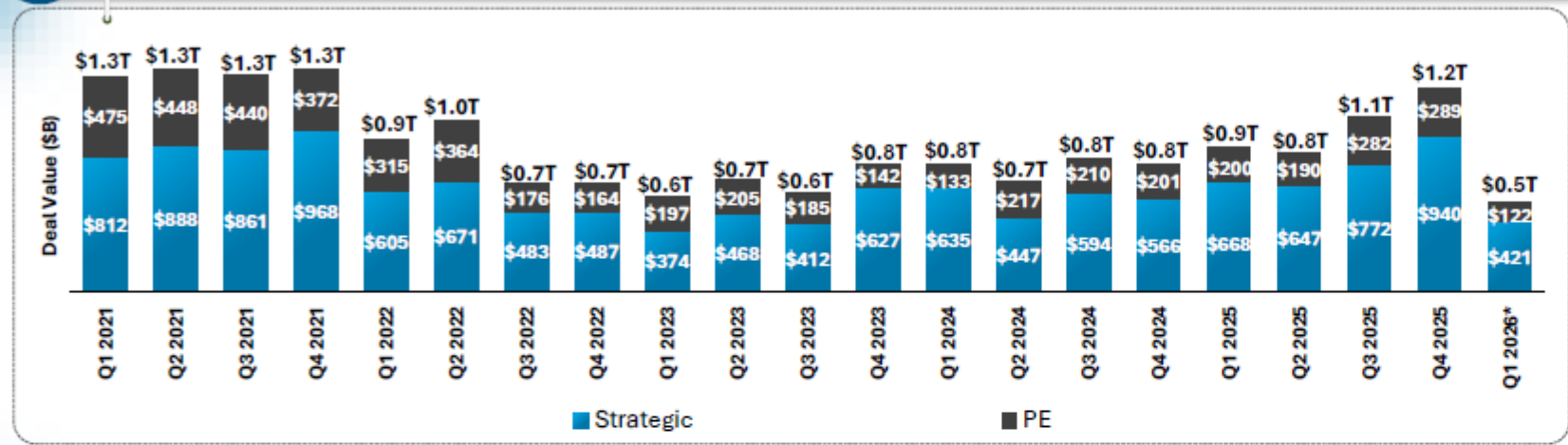
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A photograph of a business meeting. In the foreground, a hand holds a white stylus over a tablet displaying a bar chart. In the background, another person uses a pen to point at a tablet showing a pie chart. A laptop is also visible on the table. The scene is lit with a warm, golden light from the right, creating a professional and collaborative atmosphere.

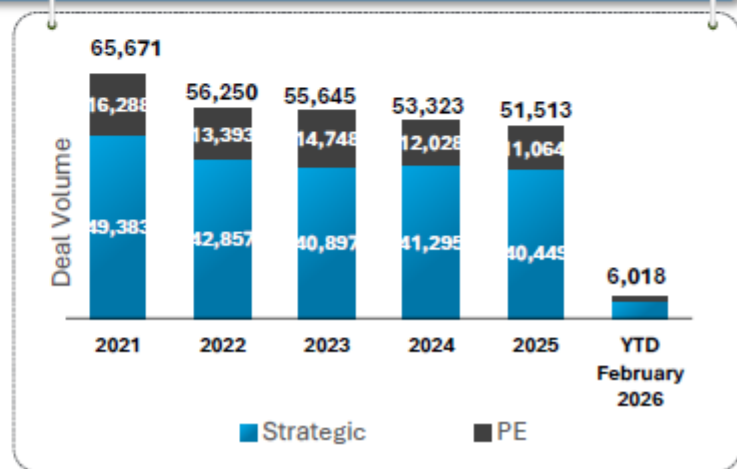
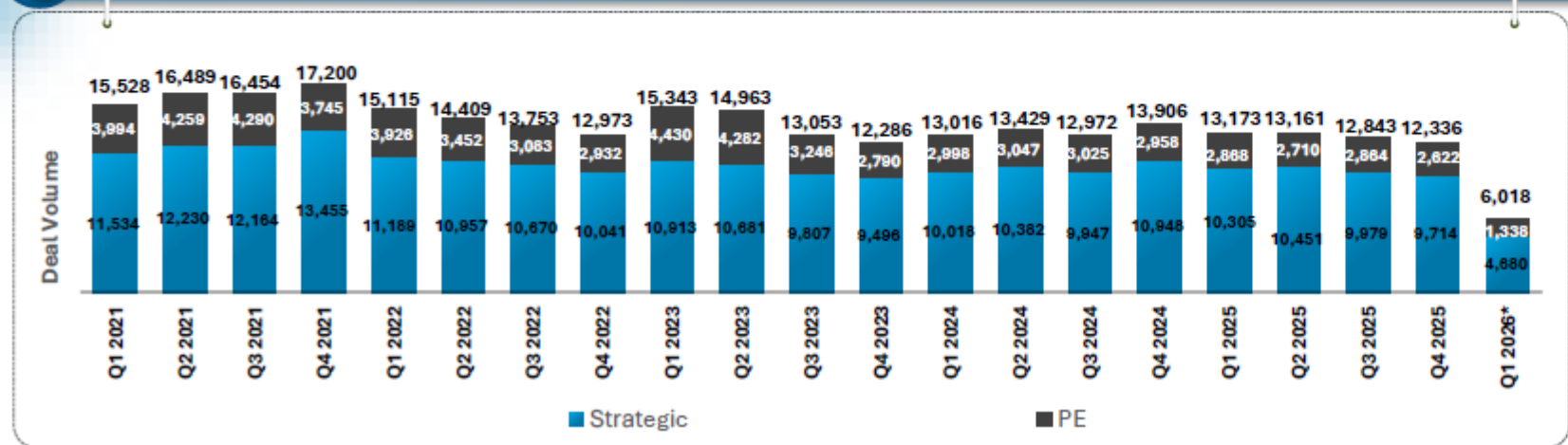
Trends in the M&A Market in Figures and Outlook for 2026

Trends in the M&A market since 2021 and Q1 2026

Global M&A activity by value



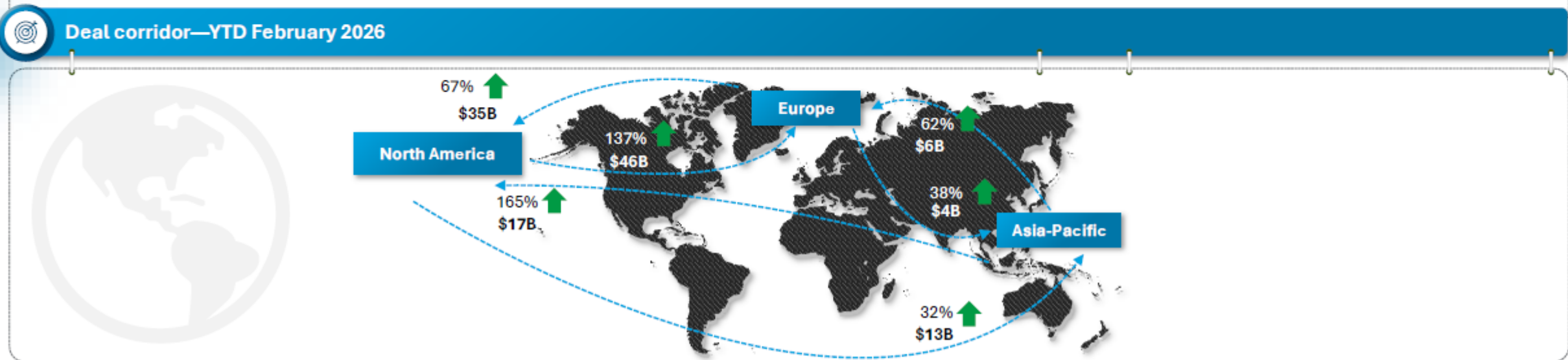
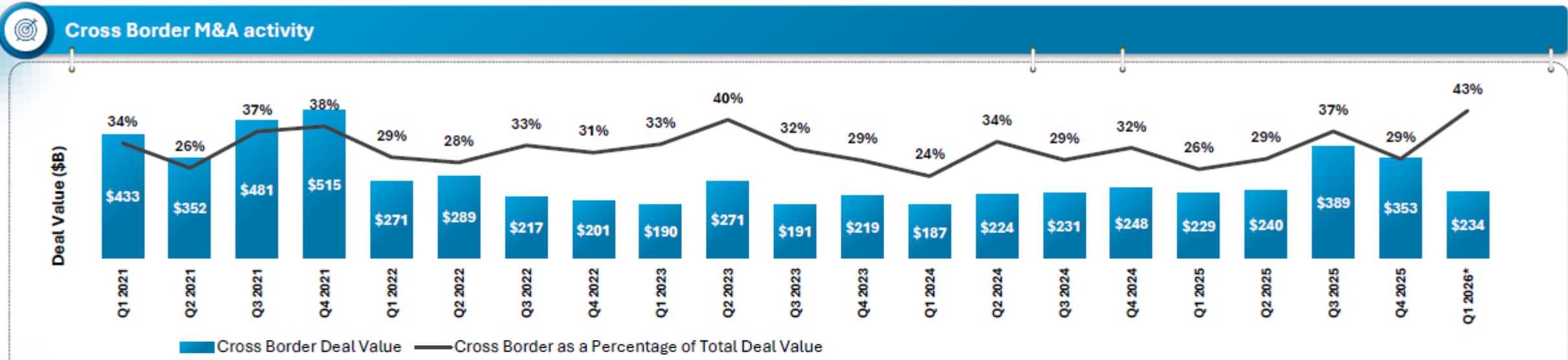
Global M&A activity by volume



Source: Deloitte analysis based on data from LSEG

Note: *Q1 2026 includes deals announced from 1st January to 28th February 2026.

Cross-Border M&A Activities

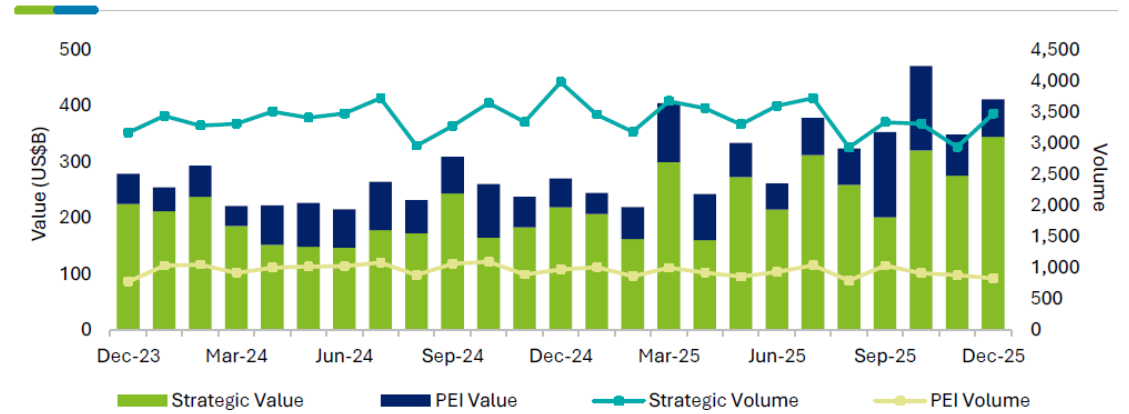


M&A Market by Region and Industry

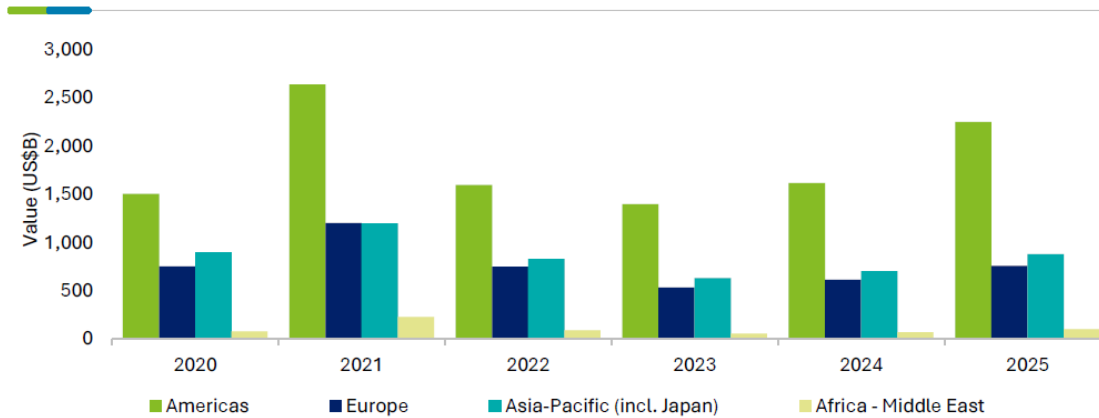
Global M&A



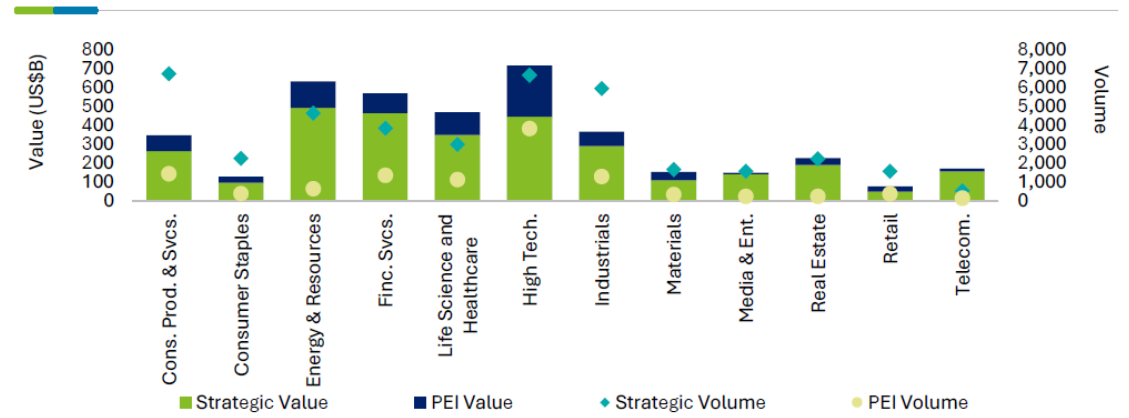
Monthly Global M&A



Regional M&A



Industry Global M&A (Jan'25—Dec'25)





Geopolitical and macro-economic factors
on the M&A market in 2026

Global uncertainties are affecting the M&A market – the naive AI phase is over

BZ Börsen-Zeitung

EU-Kommission schlägt umstrittenen Protektionismus vor

Die EU treibt strengere Investitionskontrollen und „Buy European“ voran. Verbände begrüßen zwar den Grundgedanken, kritisieren aber die...

1 week ago



San Francisco Chronicle

Sam Altman thinks tech companies are 'AI-washing' their layoffs

Sam Altman thinks tech companies are 'AI-washing' their layoffs ... OpenAI's CEO Sam Altman believes some tech companies may be blaming their layoffs on the rise...

3 weeks ago



ntv

https://www.n-tv.de › wirtschaft · Translate this page

China-Geschäft läuft nicht rund: Gewinn bei Mercedes ...

12 Feb 2026 — Der Umsatz ging um neun Prozent auf 132,2 Milliarden Euro zurück. Das operative Ergebnis vor Zinsen und Steuern sank um 57 Prozent auf 5,82 ... [Read more](#)

WELT

„Das Handwerk kämpft“ – Insolvenzen steigen auf Zehn-Jahres-Hoch

Das Handwerk in Deutschland verharrt in der Krise. Hatte der Branchenverband ZDH ursprünglich ein leichtes Wachstum für 2025 vorhergesagt, geht die...

1 week ago



Supply chain disruptions threaten Asia's oil and gas sector

Stanislav Nikulin · 12 March 2026 08:02



US targets UK, EU and Canada in new round of tariff probes

Investigations could lead to fresh levies after US Supreme Court struck down many of Trump's tariffs



US President Donald Trump (left) holds a signed trade deal with UK Prime Minister Sir Keir Starmer (right).

Private credit defaults appear much higher if borrowers are held to public market standards

Public market US Speculative-Grade Private credit* (dotted line includes selective defaults)

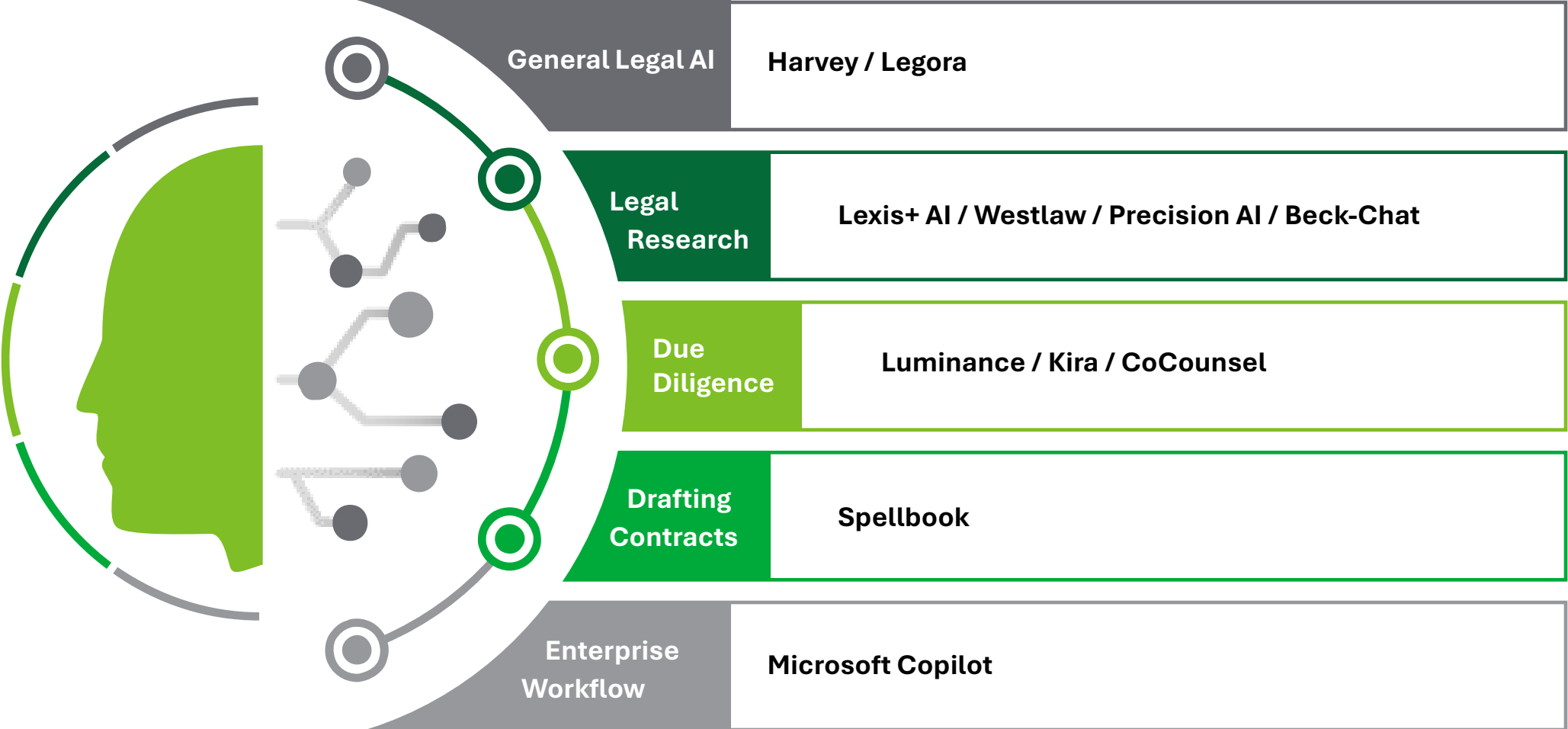


FINANCIAL TIMES Source: S&P Global Ratings *Private credit refers to the default experience of S&P Global Ratings' database of credit estimates

Legal Tech and AI in M&A



Leading legal AI platforms



Current Status Quo



1. AI is currently used in everyday work for

- initial exploratory research
- Knowledge management
- due diligence summaries
- Limited use for legal drafting



2. Current hurdles

- Compliance (Confidentiality, Data Protection, Professional Law)
- Liability (ultimate human responsibility, AI literacy as a professional and legal obligation)
- Lack of seamless implementation (e.g., with data room providers, document management tools; separate software tools)



3. Conclusion

- Many pilot groups
- Extensive “testing”
- No significant increase in efficiency yet, despite the usability of various smaller and larger tools
- No general-purpose, all-encompassing tool

A man in a dark suit and glasses is seen from behind, holding a dark umbrella. He is standing on a rooftop or balcony with a glass railing. In the background, a city skyline is visible under a bright, hazy sky with a sun flare. The overall mood is professional and contemplative.


W&I Insurance

Current Opportunities for Deal Optimization

W&I Insurance – Current Opportunities for Deal Optimization

- 25+ insurers with a primary focus on W&I and a pan-European risk appetite; approximately 15 insurers underwrite transactions in German; approximately 10 insurers with a specific focus on tax
- W&I coverage limits up to EUR 2 billion; insurable transaction volumes: from EUR 5 million to several billion
- Trend toward primary insurance programs with lower limits of EUR 15–30 million

	Historical	Current
Premiums:	1.3%–1.5% of ROL	0.7%–0.9% ROL
Minimum premiums	EUR 100–150k	EUR 40–50k
Deductible	0.5%–1% of EV fixed (deductible)	0.15%–0.25% of EV, tapering to zero (deductible)
De minimis	0.1%–0.2% of EV in accordance with SPA	Min. EUR 10k regardless of SPA provisions
Coverage	<ul style="list-style-type: none"> • Coverage generally in accordance with SPA • Warranties regularly commented on or rewritten by the insurer • Transaction-specific exclusions are standard, regardless of due diligence (including product liability, environmental issues, asset condition, COVID-19 aid, data protection) • Only a few enhancements; coverage generally does not extend beyond SPA claims • Positive (tax) coverage, i.e., only DD-reviewed facts are insurable • Identified risks are not insurable 	<ul style="list-style-type: none"> • Coverage extending beyond the SPA is standard, including disregard of liability limitations (e.g., willful misconduct by vicarious agents). • Warranty coverage generally uncommented Restrictions apply only to DD findings. • Extended coverage through a broad set of enhancements (Knowledge Scrape, Materiality Scrape, US-Style Coverage, expanded definition of loss). • Coverage beyond the DD scope is possible (e.g., tax SPA coverage, blind spot coverage, DD sampling). • Case-by-case coverage of identified risks (e.g., affirmative tax coverage, contingent risk insurance).

A woman with dark hair, wearing a dark blue blazer over a white collared shirt, is seated at a wooden table. She has her hand resting on her chin, looking off to the side with a thoughtful expression. A white mug is on the table in front of her. The background is a blurred office setting with a window and a plant.

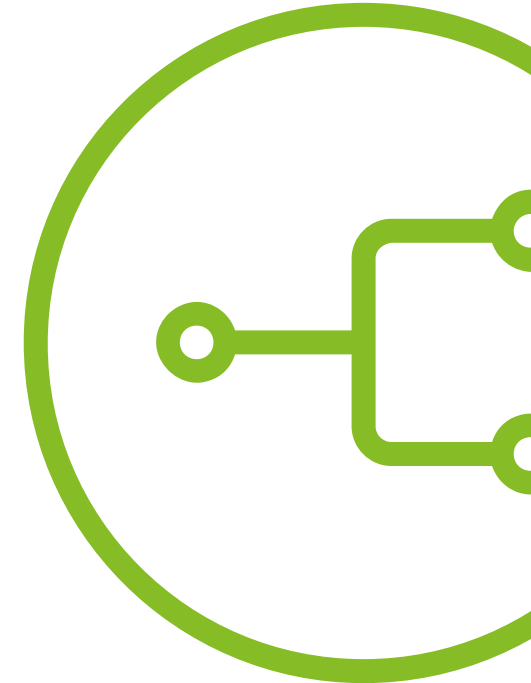
Unrestricted Exclusion Clauses and Bad Leaver Provisions

Recent case law

Validity and Formulation of Exclusion Clauses (1/8)

Principle

- The admissibility and structure of so-called **exclusion clauses** (*Hinauskündigungsklauseln*) are controversial in legal literature and case law.
- Exclusion clause = a provision in a (partnership) agreement that grants a partner, a group of partners/shareholders, or the majority of partners/shareholders the right to exclude a co-partner from the partnership / company without objective grounds.
 - Generally **void**, as the clause violates common decency (*gute Sitten*) (Section 138 para. BGB)
 - Termination could be used at any time as a means of pressure against the affected partner (sword of Damocles argument)
- An exclusion clause not subject to any further conditions is nevertheless valid if it is **objectively justified due to special circumstances**:
 - Special contractual arrangements in individual cases;
 - Special personal circumstances and special structure of the shareholder's position;
 - special purpose of the right of exclusion;
 - only secondary importance of the shareholder status compared to another professional relationship, due to which the loss of shareholder status, given its structure and purpose, does not carry decisive weight
- The Federal Court of Justice (BGH) and the Berlin Court of Appeal (*Kammergericht*) have recently established further guidelines regarding the admissibility of exclusion clauses in PE and VC structures.



Validity and Formulation of Exclusion Clauses (2/8)

BGH, Judgment of February 10, 2026 – II ZR 71/24

Overall Assessment in the Management Model

- In a management model, contrary to what is sometimes assumed in case law and legal literature, an exclusion clause does not require all criteria relied upon by the Federal Court of Justice (BGH) in its “management model” decision (September 19, 2005 (II ZR 173/04)) to be met in order to objectively justified.
- Rather, what is decisive is an **overall assessment of all circumstances of the individual case**, in which these criteria must be taken into account but do not constitute a mandatory prerequisite. The weight given to the individual criteria in this overall assessment depends on the structure of the shareholding in the company.
- The decisive factor is whether the shareholder status is granted to the managing director
 - because of his position as managing director (for example, solely as an incentive for his activities as managing director),
 - i.e., for a purpose that ceases to exist upon the termination of the office or the employment contract or the termination of the activity; and
 - the status as a shareholder has no independent significance beyond that which would be relevant alongside the position as managing director.



Validity and Formulation of Exclusion Clauses(3/8)

BGH, Judgment of February 10, 2026 – II ZR 71/24

Objective justification possible even with participation only in exit proceeds (1/2)

- The plaintiff was granted a stake in the company by virtue of his position as managing director in order to (i) bind him more closely to the company as a managing director, (ii) increase his motivation, and (iii) possibly also enhance his status as a “managing partner” both within the company and externally.
- The incentive and retention functions should not be given less weight simply because managers are not to participate in ongoing profits, but rather, as is typical in PE models, only in the proceeds from a subsequent sale of the company.

The incentive and reward function of a stake (only) in the exit proceeds is comparable to a bonus payment in the event of a successful business transaction.

- The incentive structure for participation in exit proceeds is not necessarily riskier than in “conventional” management models with a share in current profits, since the company’s earnings situation may also result in managers receiving no or only minimal distributions even with ongoing participation.
- The assumption of a justifying incentive function is not precluded by the fact that the share of exit proceeds is equally dependent on the success of the group’s other subsidiaries, because even then, the managing directors still had an incentive to make their own best possible contribution to increasing the value of the company.



Validity and Formulation of Exclusion Clauses (4/8)

BGH, Judgment of February 10, 2026 – II ZR 71/24

Objective justification possible even with participation only in exit proceeds (2/2)

- The position of a shareholder does not acquire independent significance alongside that of a managing director solely because of the economic risk assumed in that role. Objective justification within the framework of a management model does not necessarily require that managers assume no or only a minimal economic risk.
- The following circumstances alone do not lead to independent significance:
 - the plaintiff acquired the stake not at par value but at fair market value and, in the event of his exclusion, would also receive at most the fair market value of the stake pursuant to the agreed severance clause, thereby bearing not only the company's insolvency risk but also the risk of negative business performance, because the current fair market value of the shares relevant for the repurchase price may also be lower than the purchase price he paid;
 - The plaintiff, due to a lack of participation in current profits, has not previously received any compensation for the services he rendered as a shareholder.
- Furthermore, the exercise of shareholder rights was not given particular weight under the overall structure of the shareholding, particularly with regard to the link between the shareholding and the position of managing director. The possibility of enforcing one's own ideas, even against the will of the other shareholders, or of effectively influencing management through the exercise of membership rights was practically ruled out under statutory and contractual provisions.



Validity and Formulation of Exclusion Clauses(5/8)

KG Berlin, Advisory Decision (*Hinweisbeschluss*) of August 12, 2024 – 2 U 94/21

KG Berlin: Validity of time-limited vesting clauses

- **Vesting provision** = In startup financing rounds, founders often agree in a shareholders' agreement to subject all or a majority of their shares to a so-called vesting provision. This provision stipulates that the founders gradually earn these shares over a specific period by continuing to serve as managing directors or employees of the company.
- In addition, the founder makes an offer to sell and assign shares, which the company or a group of investors may accept under certain conditions.
- Typically, this offer applies to all shares if employment with the company ends during an initial phase, usually lasting one year, following the financing ("cliff").
- Such a time-limited vesting arrangement constitutes an exclusion clause, but is **objectively justified** because
 - **1. The ex ante interest of all founders themselves:** Founders who cannot offer traditional collateral are often reliant on financing from venture capitalists; vesting is what enables the inflow of capital and the appreciation of the company's shares.
 - **2. Investors' interest in protection / probationary period:** Uncertainty as to whether founders can sustain the company beyond the startup phase and a legitimate interest in a time-limited probationary period; especially at the beginning, it is permissible to assess whether the relationship of trust is sustainable.
 - **3. Conflict resolution:** Vesting provisions facilitate subsequent conflict resolution without jeopardizing the company's existence.



Validity and Formulation of Exclusion Clauses (6/8)

KG Berlin, Judgment of May 19, 2025 – 2 U 15/25

KG Berlin: Regarding a vesting clause under which the effective removal of a founder as a managing partner and the effective termination of his managing director service contract are intended to simultaneously and indefinitely result in the loss of his shares

In this case, the KG Berlin saw **no objective justification**:

- The loss of shareholder status can, in principle, only be agreed upon with a time limit.
- Exclusion must always remain a last resort, as it affects the core of membership. A sufficient objectively justified reason is, for example,
 - a persistent and gross violation of shareholder duties;
 - a serious breach of a non-competition clause in the articles of association;
 - profound discord among the shareholders, caused at least predominantly by the shareholder to be excluded, without the existence of grounds for exclusion on the part of the shareholders initiating the exclusion proceedings.
- **No objective justification** if the criteria applicable to the mere removal as a managing director and termination of his managing director service contract are also sufficient for the loss of membership as such, which precludes further participation in created value. Mere removal from management must be considered as a sufficient less severe measure before a resolution to redeem shares can take effect.



Validity and Formulation of Exclusion Clauses (7/8)

Conclusion

An exclusion clause is permissible if

- it is objectively justified (for example, because the position of a shareholder is merely ancillary to management activities);
- the exclusion is linked to clearly defined events;

An overall assessment of all circumstances of the individual case is required.

Distinction must be made between grounds relating to the shareholder level and those relating to the managing director's activities.

The size of the equity stake must be taken into account when drafting the contractual provisions (see BGH vs. KG Berlin case).

A distinction must be made between **the validity of the termination clause** and **the reasonableness of the severance payment** - an unreasonable severance payment does not necessarily result in the invalidity of the exclusion clause, but rather often leads to a (judicial) adjustment of the severance payment.

Call options **with no time limit** should, for reasons of legal certainty, be the exception and be linked to particularly serious grounds (e.g., a sustained, gross breach of shareholder duties, serious violations of a non-competition clause in the articles of association, or a profound rift among the shareholders, each of which has been caused at least predominantly by the shareholder to be excluded, and without ground for exclusion on the part of the shareholders initiating the exclusion proceedings).

Note: Irrespective of this, the exercise of the right to excluded a shareholder from the company is subject to the **exercise control provisions** under Sections 242, 162 para 2 of the German Civil Code (BGB); e.g. an “untimely exercise”, such as termination shortly before an exit to avoid sharing in the exit proceeds, may nevertheless be in breach of fiduciary duty and thus invalid.



Validity and Formulation of Exclusion Clauses (8/8)

Specific recommendations for action

On the buyer's side

- For reasons of legal certainty, we recommend limiting the exercise period of the bad leaver call option; this should in any case also align with the economic intent;
- The rationale/motivation for implementing a “bad leaver” concept should be briefly explained in one or two sentences (incentivizing founders/managing directors to remain loyal to the company; continuity of management post-closing being of great, existential importance to the investor);
- The definition of a “bad leaver” should be formulated clearly and unambiguously (ideally as a positive and negative list);
- Note: Regardless of the contractual structure, any subsequent exercise of the bad leaver call option is always subject to the exercise control provisions under Sections 242, 162 para 2 of the German Civil Code (BGB);
- In cases of significant re-investments, the validity of exclusion clauses is significantly more critical.

On the seller's side

- The limits outlined above can be used to “renegotiate” excessive bad leaver call options;
- A clear formulation of the bad leaver definition is also in the seller's interest;
- In particular, an explicit definition of good leaver events should be formulated and their legal consequences clearly regulated;
- “Exercise at an inopportune time” (e.g., shortly before exit) should be contractually excluded despite mandatory exercise controls and clearly illustrated with a concrete example including a specific timeframe.





Management and Employee Participations

Hurdle and Growth Shares

Legal M&A Trends in 2026

Employee Participation in the Form of Hurdle Shares/Growth Shares (1/2)

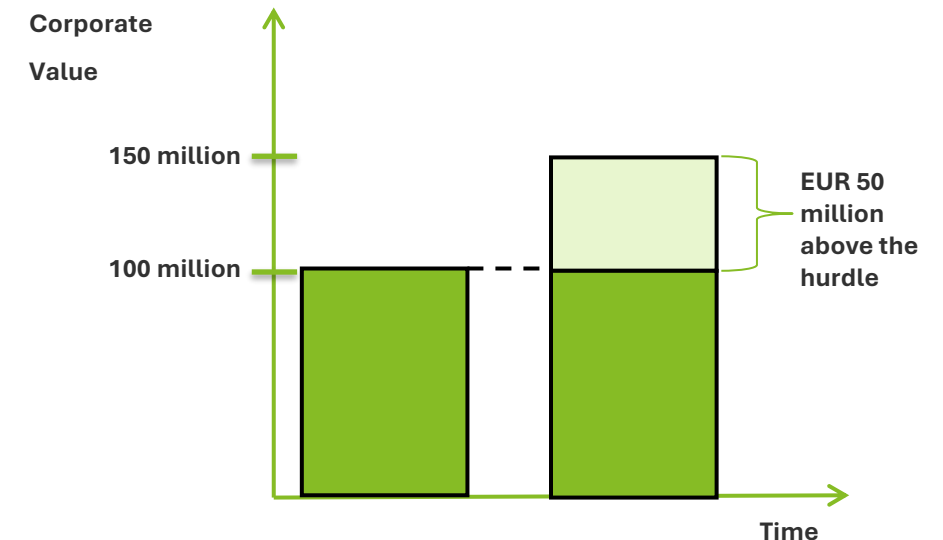
Hurdle Shares / Growth Shares:

What are Hurdle Shares or Growth Shares?

- A form of equity participation (usually at nominal value) primarily used in management or employee participation programs, typically in the private equity sector
- A special class of shares subject to negative liquidation and distribution preferences
- Negative liquidation and proceeds preference reduces the fair market value of the Hurdle/Growth Shares; enables management incentives when additional equity for managers is difficult to finance due to high fair market value
- Management typically participates only in the company's value appreciation above a certain threshold ("hurdle"), but not in the company's value to date
- Tax advantage: At the time of grant, no immediately taxable monetary benefit arises because the new shares currently have no significant fair market value due to the hurdle not yet being reached.

How do Hurdle / Growth Shares work?

- The company is currently worth, for example, EUR 100 million.
- Management is to participate in value increases above EUR 100 million.
- In return, management receives shares that only acquire economic value once the company's value rises above the hurdle.
- As is customary for other sensitive shareholder issues, particularly sensitive matters regarding hurdle shares are regularly transferred to the shareholders' agreement, while the core provisions are contained in the articles of association.



Legal M&A Trends in 2026

Employee Participation in the Form of Hurdle Shares/Growth Shares (1/2)

(2/2)

Summary: Pros and Cons of Hurdle Shares

Advantages

- **Genuine ownership interest:** Incentivizing management/employees through actual ownership interests (as opposed to the VSOP).
- **Investor protection:** The affected shareholders receive no exit proceeds if the company's value falls below the hurdle; management only profits if the investors have first reached their target.
- **Tax Advantage:** Traditional payroll taxation on a notional income benefit is avoided

Disadvantages

- **Comparatively high administrative burden:** Due to the genuine form of ownership, significantly more effort is required than with the VSOP (possibly including a capital increase); notarization is required for a GmbH
- **IPO:** Not suitable for an intended exit via IPO, because shares are typically treated pari passu in an IPO.


Conclusion

- Particularly suitable for managing directors, key personnel, and buybacks by former shareholders/founders
- Less suitable for broad employee participation—a VSOP is better in this case



Q&A





**Thank you very
much**
for your attention

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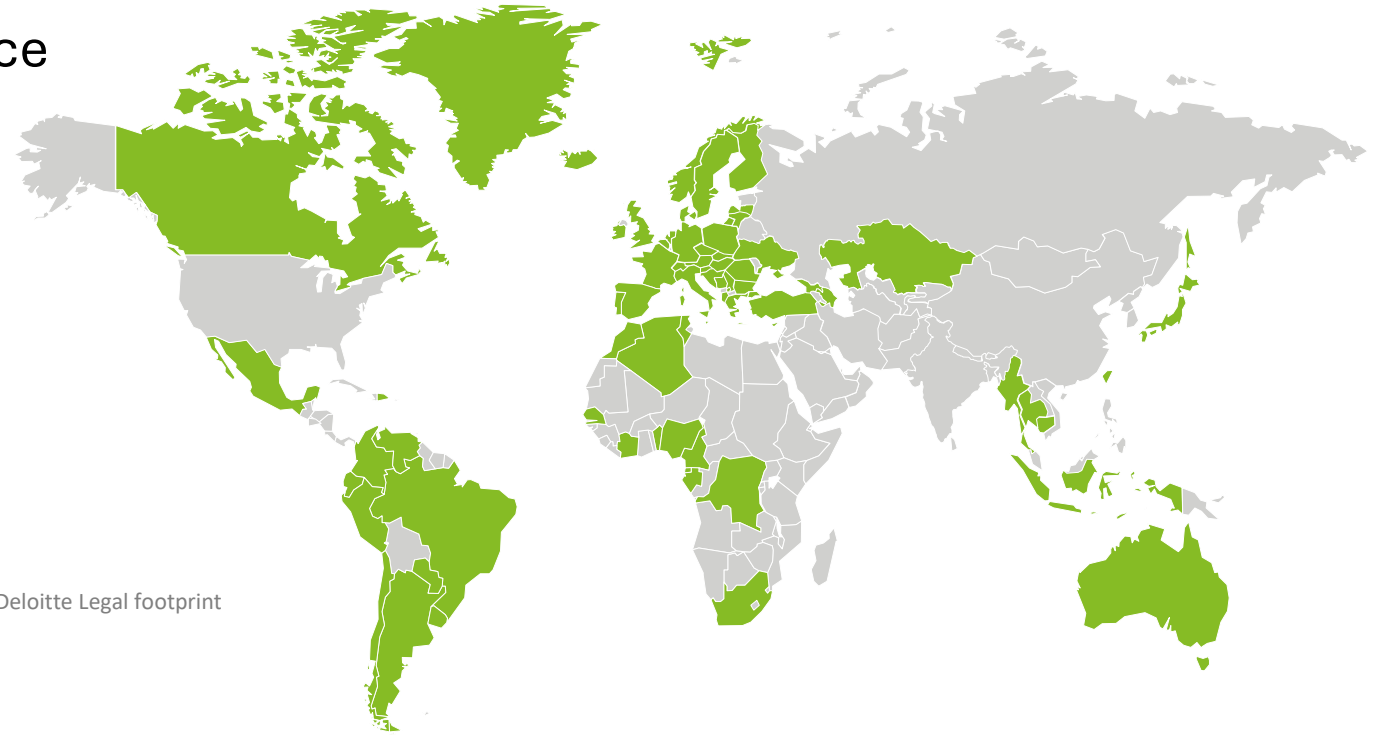
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| 3. Argentina | 17. Costa Rica | 31. Germany | 45. Latvia | 59. Portugal | 73. Turkey |
| 4. Australia | 18. Croatia | 32. Greece | 46. Lithuania | 60. Romania | 74. Ukraine |
| 5. Austria | 19. Cyprus | 33. Guatemala | 47. Malta | 61. Senegal | 75. Uruguay |
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| 7. Belgium | 21. Democratic Republic of the Congo | 35. Hong Kong SAR, China | 49. Montenegro | 63. Singapore | 77. Venezuela |
| 8. Benin | 22. Denmark | 36. Hungary | 50. Morocco | 64. Slovakia | |
| 9. Bosnia | 23. Dominican Republic | 37. Iceland | 51. Myanmar | 65. Slovenia | |
| 10. Brazil | 24. Ecuador | 38. Indonesia | 52. Netherlands | 66. South Africa | |
| 11. Bulgaria | 25. El Salvador | 39. Ireland | 53. Nicaragua | 67. Spain | |
| 12. Cambodia | 26. Equatorial Guinea | 40. Italy | 54. Nigeria | 68. Sweden | |
| 13. Cameroon | 27. Finland | 41. Ivory Coast | 55. Norway | 69. Switzerland | |
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